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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,695

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Jorge L. Orbay

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10/25/2006

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EXAMINER

ISABELLA, DAVID J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,695

Applicant(s)

ORBAY, JORGE L.

Examiner

DAVID J. ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,9,10,12,14-18,28,29,31-35,37-42,44-49,52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,9,10,12,14-18,28,29,31-35,37-40,42,44-49,52 and 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

Applicant's election of species depicted in figures 10 and 3 in the reply filed on 8/16/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Currently claims 1-3,9,10,12,14-18,28,29,31-35,37-42,44-49, 52 and 53 are pending for action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 39 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As worded, the claim appears to be inaccurate. As illustrated in applicant's drawings the linear arrangement is parallel to the head portion and angled with respect to the shaft portion.

Claim 44, there is no antecedent support for "said axes".

***Claim Rejections - 35 USC § 102***

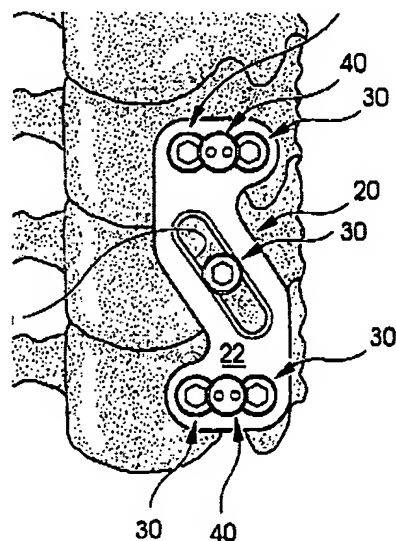
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

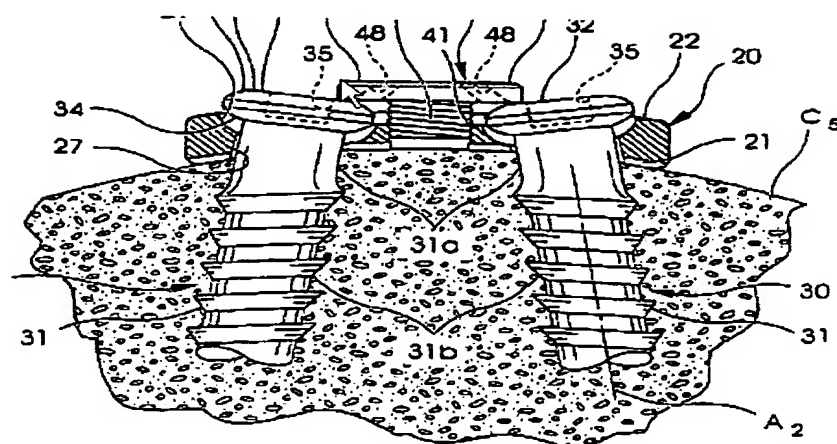
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37-40,42,44-50,52,53 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lowery et al [5364399].

Lowery et al discloses an orthopedic fixation system, comprising: a) a rigid device having an upper surface and a lower surface, said device having a head portion and a shaft portion; and b) a plurality of elements for supporting the bone extending from said lower surface of said head portion, said elements being obliquely angled relative to each other and none of said elements converging in angle toward another element.



*Fig. 1*

*Fig. 5*

Head portion contains the series of apertures 30 and the shaft portion has the elongated slot formed therein. The cooperation of the bone screws with the apertures allows the screws to be divergent and obliquely angled with respect to each other.

Claim 38, in column 5, lines 15+, the invention is explained according to a preferred embodiment illustrating two screws, however, Lowery et al states that a plurality of screws may be used which would include more than two, as illustrated.

Claim 39, in so far as definite, the examiner is interpreting the linear arrangement to be parallel to the head portion.

Claim 40, the linear arrangement is across the head portion.

Claim 42, is directed to a method of aligning the device in vivo at the bone surface and fails to further define the structure of the device.

Claim 44, see figure 5 supra.

Claim 45, the device has a size for placement on a bone surface.

Claim 46, if the elongated axis of the shaft of the device is aligned vertically, then the axis of the head will be angled upwards relative to the shaft portion.

Claim 47, the shaft and the head portions form a T-shaped configuration as broadly worded. (ie. the claim does not require the lines forming the "T" to be perpendicular.)

Claim 48, see hole in shaft portion.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims, 49 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al [5364399] as applied to claim 37 above, and further in view of any of Bono [5954722], Talos et al [5709686] and Frigg et al [6206881].

The use of threaded holes in combination with fastening elements to provide for better securement of the bone device to the bone is taught by each of Bono, Talos et al and Frigg et al. To provide the holes with threads to cooperate with threaded elements of Lowery et al thereby forming a more secure fastening system would have been obvious from the teachings of any of the secondary references.

Claims 1-3,9,10,12,14,-18, 8,29,31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al [5364399] in view of any of Bono [5954722], Talos et al [5709686] and Frigg et al [6206881]

Lowery et al discloses an orthopedic fixation system, comprising: a) a rigid device having an upper surface and a lower surface, said device having a head portion and a shaft portion; and b) a plurality of elements for supporting the bone extending from said lower surface of said head portion, said elements being obliquely angled relative to each other and none of said elements converging in angle toward another element. The use of threaded holes in combination with fastening elements to provide for better securement of the bone device to the bone is taught by each of Bono, Talos et al and Frigg et al. To provide the holes with threads to cooperate with threaded elements of Lowery et al thereby forming a more secure fastening system would have been obvious from the teachings of any of the secondary references.

Claim 2 and 3 see figure 5 and corresponding portion of the specification.

Claim 9, see rejection to claim 1 supra. Note claim 9 is broader in scope than claim 1.

Claim 10, see hole in shaft portion as shown in figure 1.

Claim 12, see alignment of the holes as shown in the figures.

Claim 14, see rejection to claim 2 supra.

Claims 15, see four holes in figure 1.

Claim 16, see rejection to claim 10 supra.

Claim 17 is directed to an intended use of the device and as broadly worded, the plate of Lowery et al could be placed on a distal radius bone.

Claim 18 see shaft portion as illustrated in figure 1.

Claim 28, note the four holes in head portion ( at each end of the shaft) are readable on the claim as broadly worded.

Claims 29 and 32, the manner in which the device is employed does not further limit the structure of the device. As broadly worded, the claims do not structurally distinguish over the same as illustrated by Lowery,et al.

Claims 31,33-35, see figures 1 and 5 supra.

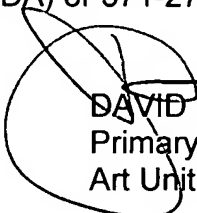
Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
10/20/2006